

Chief Judge Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 HENRY ROSENAU, )  
 )  
 Defendant. )

NO. CR06-157MJP

GOVERNMENT'S ADDENDUM  
TO REPLY RE: RENOTING

Noted: March 16, 2012

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Susan M. Roe and Marc A. Perez, Assistant United States Attorneys for said District, files this short Addendum to its Reply to the Defendant's Opposition to the Renoted Motion for Authorization to Depose Foreign Witnesses.

Gerald Auerbach, of the General Counsel's Office for the United States Marshal Service (USMS), responded to the government's inquiry regarding its ability to maintain custody of a federal prisoner in a foreign country. He cited *In Re Neagle*, 135 US 1 (1890) for the basis of authority regarding the USMS in the United States. Although broad within the U.S., the case limits the USMS authority to the United States.

We hold it to be an incontrovertible principle that the government of the United States may, by means of physical force, exercised through its official agents, execute *on every*

*foot of American soil* the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent. . . . *Emphasis added.*

The USMS organic statute, Title 28, United States Code, Section 561, *et seq.*, is consistent with the limitations of authority to United States “territorial jurisdiction,” which is defined in Title 18, United States Code, Section 5, to “all places and water, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone.”

Canada is not “American soil” or within the United States territorial jurisdiction. Therefore, the USMS which has no power on foreign soil unless specifically granted by that sovereign, cannot retain custody of a federal prisoner while in Canada.

Mr. Rosenau is in federal custody and unable to physically attend depositions in a foreign country.

DATED this 19th day of March, 2012.

Respectfully submitted,

JENNY A. DURKAN  
United States Attorney

*s/Susan M. Roe*

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SUSAN M. ROE  
Assistant United States Attorney  
United States Attorney's Office  
700 Stewart Street, Suite 5220  
Seattle, WA 98101-1271  
Telephone: (206) 553-1077  
Fax: (206) 553-0755  
E-mail: [susan.roe@usdoj.gov](mailto:susan.roe@usdoj.gov)

*s/Marc A. Perez*

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Marc A. Perez  
United States Attorney's Office  
1201 Pacific Avenue, Suite 700  
Tacoma, Washington 98402  
Telephone: (253) 428-3822  
Fax: (253) 428-3826  
Email: [Marc.Perez@usdoj.gov](mailto:Marc.Perez@usdoj.gov)

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney of record for the defendant.

*s/ Kathleen M. McElroy*  
KATHLEEN M. McELROY  
Paralegal Specialist  
United States Attorney's Office  
700 Stewart, Suite 5220  
Seattle, Washington 98101-1271  
Phone: 206-553-7970  
Fax: 206-553-0755  
E-mail: Katie.McElroy@usdoj.gov